IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1017 To 1019, of 2001

With

FIRST APPEAL NO.1538 and 1598 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO. LTD

Versus

DOLUBHAI HAMABHAI JETHWAR DECDTHRO' HEIRS SONIBEN D JETHWA

Appearance:

MR PV NANAVATI for Appellant

MR L.B. DABHI for MR AMITKUMAR C BHATT for Respondents-original claimants

MR SANDEEP N BHATT for Respondent No. 5

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 18/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request of learned counsel,these appeals are taken up for hearing today.

2. These appeals can be dealt with and disposed of together inasmuch as they arise from a common judgement and awards passed in a group of claim petitions under section 163-A of the Motor Vehicles Act, 1988.

3. These are appeals under section 173 of the Motor Vehicles Act, at the instance of the Insurance Company, challenging the judgement and awards passed by the Motor Accident Claims Tribunal, Nadiad, under section 163-A of the said Act.

4. The impugned awards have been passed under section 163-A of the said Act during the pendency of the claim petitions filed by the respondents-claimants under section 166 of the said Act. The said claim petitions under section 166 are yet pending.

5. Learned counsel for the appellant contends that the Tribunal has erred in law in treating the said Claim Petition under section 163-A as a claim of an interim nature, and has dealt with it in a manner similar to a claim under section 140 of the said Act. It was contended that on account of this approach on the part of the Tribunal, the appellant Insurance Company had no opportunity of leading appropriate evidence and/or meeting the contentions of the original claimants in these proceedings under section 163-A. According to the learned counsel for the appellant, the law as laid down by the Supreme Court does not permit the claimants to pursue a claim under section 163-A of the Act, whether by way of an interim application or even by way of a final decision, as long as the main claim under section 166 of the said Act is pending adjudication. In other words, learned counsel for the appellant contends that the claims filed under section 163-A and section 166 of the said Act are in the nature of alternative remedies, and only one of such remedies can be pursued, whereas the two remedies cannot be pursued simultaneously or in succession. We are obliged to accept this contention on the part of the learned counsel for the appellant in view of the clear decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala and others, reported in JT 2001(4) SC 477. It is,

therefore, obvious that on the facts of the case, since the main claim petition under section 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide a claim under section 163-A of the said Act. In the premises aforesaid, the impugned awards under section 163-A are required to be quashed and set aside. We hold and direct accordingly.

6. The facts of the case, however, require further directions to be given in respect of the amount which may have been deposited by the appellant before the Tribunal, in respect of the impugned award under section 163-A of the said Act.

7. On the facts of the case we are informed that the amount of compensation awarded by the Tribunal in favour of the claimants has been deposited before the Tribunal by the appellant-Insurance Company (as apportioned between the two Insurance Companies who are the appellants in the present group of matters). However, it is stated before us that the said amount is still lying with the Tribunal and has in fact not been withdrawn by way of disbursement and/or investment as directed in the impugned awards.

8. In view of the fact that the impugned awards under section 163-A have been quashed and set aside, it would normally follow that the appellant Insurance Company would be entitled to restoration of the status quo ante. However, we are mindful of the fact that the main claim under section 166 is yet pending adjudication and are also mindful of the fact that in such a claim petition, it is always open to the claimants to prefer an application under section 140 of the said Act.

9. In the premises aforesaid, and on the facts of the case, we hold by consensus between the learned counsel for the parties that it would be open to the respondents - original claimants to prefer an application under section 140, in the claim petition now pending under section 166 of the said Act.

10. However, we are also conscious that in case of fatality from which the main claim petition arose, the maximum the Tribunal could award under section 140 would be Rs.50000/- and in the case of an injury a sum of Rs.25000/-. It would, therefore be appropriate to direct that it shall be open to the appellant Insurance Company to apply to the Tribunal for refund of the amount which is in excess of Rs.50000/- and in excess of Rs.25000/- as the case may be. If and when such an application is

made, the Tribunal shall ordinarily grant the same. In other words, the appellant Insurance Company in First Appeal No.1017/2001 may apply for refund of the amount which is in excess of Rs.50000/-, and in the case of other appeals viz. FA Nos.1018/2001, 1019/2001, 1538/2001 and 1598/2001, the concerned appellant Insurance Company may apply for withdrawal of the amount which is in excess of Rs.25000/-. It is clarified that the amount of Rs.25000/- and Rs.50000/- as the case may be, which remains with the Tribunal is only for the purpose of securing the award in favour of the claimants that may be passed by the Tribunal in respect of the claimants' application under section 140 of the said Act, which will naturally be adjusted against the final award which may be passed under section 168 of the said Act.

11. However, before actual permission is granted to the claimants by the Tribunal permitting withdrawal of the said sum of Rs.50000/- and Rs.25000/- as the case may be, the claimants in each case shall file an undertaking before the Tribunal to the effect that the claimants shall pursue the main claim petition under section 166 of the Act, and obtain an adjudication thereon on merits and in accordance with law, and that they shall not permit the said application to be withdrawn or dismissed for default, or be disposed of in any other manner and that the amount which may be permitted by the Tribunal to be withdrawn shall be adjusted in the final award under section 168 of the said Act. If such an undertaking is not filed along with the application under section 140 of the said Act, it shall be open to the appellant Insurance Company to apply to the Tribunal for withdrawal of the said amount of Rs.50000/- or Rs.25000/- as the case may be.

12. These appeals are, therefore, allowed to the aforesaid extent with no order as to costs. Decree accordingly.

13. It requires to be noted that on the facts and circumstances noted hereinabove and in view of the directions consequently issued, it would be appropriate for the Tribunal to expedite the hearing of the main claim petition under section 166 of the said Act, and to dispose of the same as early as possible in consonance with the date of its filing and the workload before the Tribunal.

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